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Supreme Court of the United States

OCTOBER TERM 1956

No. 248

WOODROW W. HOOD, PEGGY ANN HOOD, LEVER RAY, IRMA RAY, HENRY LOWREY, AND RUTH LOWREY, PETITIONERS,

versus

BOARD OF TRUSTEES OF SUMTER COUNTY SCHOOL DISTRICT NO. 2, SUMTER COUNTY, SOUTH CAROLINA, J. E. MAYES, JR., CHAIRMAN OF SAID BOARD, H. E. KIRVEN, C. W. GOODMAN, W. T. BROGDON, J. ELBERT DAVIS, JR., MEMBERS OF SAID BOARD, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above entitled case on April, 25, 1956.

OPINIONS BELOW

The opinions, statements and charges of the District Court in denunciation of the decision of the Supreme Court in the Segregation cases, rendered May 17, 1954, *Brown v. Board of Education,* 347 U. S. 483, in refusal of petitioners' motion for judgment to which they are entitled under said decision, are unreported and appear in the record, pages 11-32, under the heading "Transcript of Hearing on Motion for Summary Judgment."

The opinion of the Court of Appeals, printed in Appendix "D" hereto, infra, p. 25, is reported in 232 F. (2d) 626.

JURISDICTION

The judgment of the Court of Appeals was entered on April 25, 1956, infra, p. 26. Jurisdiction of the Court of Appeals was invoked under 28 U. S. C. Section 1291 and Section 1292 (1). The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254 (1).

QUESTIONS PRESENTED

1. Was not the court below in error in affirming the order of the District Court upon the ground that petitioners were not entitled to the injunctive relief sought for the reason that they had not exhausted supposed administrative remedies provided by recent South Carolina statute?

2. Is not South Carolina statute, Act No. 662, Acts and Joint Resolutions of 1956, apparently intended to be referred to by the court below, violative of the Fourteenth Amendment to the Constitution of the United States and void as part of a legislative plan to evade and defeat the decision of the Supreme Court in the Segregation cases, *Brown v. Board of Education,* 347 U. S. 483, and to maintain segregation in the public schools?

3. Are not the supposed remedies provided by the said South Carolina Act No. 662, Acts and Joint Resolutions of 1956, judicial and not administrative, except in particulars as to which the record shows action by petitioners prior to the passage of the said Act substantially equivalent to exhaustion, and is not the said Act No. 662 considered alone violative of the Fourteenth Amendment?

4. In the circumstances of the case as shown by the record on petitioners' motion for summary judgment—when there was no material issue of fact or semblance of defense save the abortive plea of the provisions of the South Carolina Constitution and statutes held void in the Segregation cases, *Brown v. Board of Education*, and the District Court denounced and repudiated the law as it is declared in the said cases and in denial of the relief to which petitioners were entitled refused the motion—was not the order in refusal in effect a final order and did not the court below err in holding to the contrary?

5. Should not the court below have reversed the District Court and granted the relief sought?

6. In view of the broad implications of the attack upon the Supreme Court involved in the instant case in which rights to which petitioners are indisputably entitled under *Brown v. Board of Education* are denied them in the circumstances and manner shown by the record, is it not of great importance in the public interest generally, as well as in the interest of the large number of people composing the class here directly affected, that the relief sought by petitioners be granted by the Court in reaffirmance of the principle that this is and shall continue to be a country governed by law and that the Supreme Court is the final arbiter in disputes involving rights arising under the Federal Constitution?

STATUTES INVOLVED

The statutes and Interposition Resolution involved are:

Act No. 55, Acts and Joint Resolutions of South Carolina of 1955 (R. 37), printed in Appendix "A" hereto, infra, p. 15.

South Carolina Interposition Resolution, Act of February 14, 1956, Calendar No. S. 514, printed in Appendix "B" hereto, infra, p. 16.

Act No. 662, Acts and Joint Resolutions of South Carolina of 1956 (R. 37), printed in Appendix "C" hereto, infra, p. 21.

STATEMENT

The jurisdiction of the District Court was invoked under 28 U. S. C. Section 1343 (3) because of the deprivation under color of law, statute, regulation, custom and usage of a state of rights, privileges and immunities secured to petitioners by the Fourteenth Amendment to the Constitution of the United States and by the laws thereof, U. S. C. 8, Section 43.

Petitioners and the class represented by them are a group of people of brown skin commonly known as Turks, who live, and whose ancestors lived since shortly after the Revolutionary War, in the northwestern section of Sumter County, South Carolina, in School District No. 2 of said county. According to tradition they descended from the Turkish race and in all public relationships they have been looked upon and treated as white people and they so regard themselves.

The children of the group of elementary and graded school age are required by respondents to attend a segregated elementary and graded school in the said School District known as the Dalzell School, which is provided exclusively for them, where no other children except children

of this group are permitted to be enrolled, and because of their race and color they are refused admission to the white elementary and graded schools of the district, except that a few of the children are permitted to attend two of the smaller white schools known as the Wedgefield School and the Brogdon School (R. 33).

The children of the group of high school age also attend the white high school of the district, known as the Hillcrest High School, by reason of a decree of the United States District Court for the Eastern District of South Carolina rendered on January 8, 1951, in a class action identical with the instant action brought by members of the group on behalf of themselves and all other members similarly situated against the then school trustees in which relief was sought from the exclusion of the children of the group of high school age from the said high school on the ground of race and color, the decree holding that they could not be excluded on such ground and restraining the trustees from denying them admission on such ground.

But notwithstanding the said decree and the fact that the children of the group of high school age are attending the said white high school (R. 33), and although they are permitted to attend the small Wedgefield and Brogdon white elementary and graded schools without objection, they are because of race and color refused by respondents admission to the other and larger white graded and elementary schools of the district.

To redress such discrimination this class action (1) for a declaratory judgment that the action and policy of respondents in so excluding the said children from the said white elementary and graded schools on the ground of race and color is violative of the Fourteenth Amendment to the Constitution of the United States, and (2) for a temporary

and permanent injunction restraining such exclusion on such ground, was commenced on August 31, 1953.

Respondents admitted the exclusion of the said children from the said schools on the ground of race and color and plead in defense and as justification of such action and policy the socalled separate but equal doctrine and provisions of the Constitution and statutes of South Carolina which in *Brown v. Board of Education*, 347 U. S. 483, are expressly held to be null and void (R. 9-11).

On motion by petitioners for summary judgment for the relief sought, interrogatories propounded and answers thereto and affidavits filed merely emphasizing respondents' said admissions, the District Court assailed and denounced the decision of the Supreme Court in *Brown v. Board of Education*, ridiculed and denounced the Court and questioned and impugned its motives in rendering the said decision, charged that the Court made or changed the Constitution of the United States, that it was influenced by the thinking of Socialists and leftwingers, and otherwise excoriated the Court and disparaged and repudiated the said decision in the manner as shown by the record (R. 11-32), and by order made on December 21, 1955, refused the motion.

On appeal the Court of Appeals, holding that the order was not a final order and that the appeal could be entertained only by considering the denial of the motion as denial of the injunctive relief sought, and so considering it, affirmed the order upon the ground that petitioners were not entitled to the injunctive relief sought for the reason that they had not exhausted the administrative remedies provided by a recent South Carolina statute, referred to by the Court as Act No. 55, Acts and Joint Resolutions of South Carolina of 1955, which was grievous error as is shown hereinbelow.

REASONS FOR GRANTING THE WRIT

1. There is presented in the instant case an extraordinary and unprecedented situation correction of which by the Supreme Court is of immeasurable importance from the standpoint of the public interest as it is affected by the proper functioning of the courts and respect for law, and is necessary to prevent the complete annihilation of petitioners' rights here undertaken to be asserted and to which under *Brown v. Board of Education* they are indisputably entitled.

2. The court below was clearly in error in holding and in sustaining the order of the District Court upon the ground that petitioners were not entitled to the injunctive relief sought for the reason that they had not exhausted administrative remedies provided by recent South Carolina statute.

Reference to the South Carolina statute referred to by the Court, Act No. 55, Acts and Joint Resolutions of 1955, (R. 37), Appendix "A" hereto, infra, p. 66, shows that this Act does not provide administrative remedies whatsoever or purport to do so. Petitioners could, therefore, hardly have failed to exhaust such remedies under the Act of 1955, as the Court held they did, when it provides none.

It seems evident that the Court had in mind Act No. 662, Acts and Joint Resolutions of South Carolina of 1956, approved March 8, 1956, Appendix "C" hereto, infra, p. 21, but gained the erroneous impression that this Act was passed in 1955, and mistakenly referred to it as Act No. 55 of the Acts and Joint Resolutions of 1955. Attention is called to the manner in which the two Acts were printed by respondents in the record (R. 37-40)—Act No. 55 being numbered and bearing the heading "Act No. 55, Acts and Joint Resolutions of South Carolina of 1955", and the beginning of Act No. 662 of 1956 commencing on the same

page immediately following Act No. 55 and not being numbered and bearing no similar heading, which it would seem probably explains the Court's mistaken reference, but does not explain or correct the Court's finding or its affirmance of the order.

The order of the District Court was rendered on December 21, 1955, as has been seen (R. 33). It is obviously impossible that petitioners could have failed to exhaust the supposed administrative remedies provided by the Act of 1956 and that such failure could have been reason for sustaining the order when the Act was not in existence when the order was rendered. There is, therefore, no basis whatsoever for the holding that petitioners were not entitled to the injunctive relief sought or for affirmance of the order.

3. The record shows that Act No. 662, Acts and Joint Resolutions of South Carolina of 1956 was injected into the instant case for the first time by way of argument on the appeal from the order of the District Court. The action having been commenced, jurisdiction having been properly invoked and the court having taken jurisdiction, on August 31, 1953, the case having proceeded to the point of motion for judgment by petitioners and the order of the District Court thereon having been rendered on December 21, 1955, and the appeal therefrom having been taken, and the said Act No. 662 not having been passed until March 8, 1956, during the pendency of the appeal, the instant case could not be affected or retarded in the slightest way by the said Act No. 662, even if it were valid. *Freeman v. Howe*, 65 U. S. 450, 24 How. 450, 16 L. Ed. 749; *Peck v. Jenness*, 48 U. S. 612, 12 L. Ed. 841; *Fremont Cake & Meal Co. v. Wilson & Co.*, 183 F. (2d) 57.

4. The said Act No. 662, Acts and Joint Resolutions of South Carolina of 1956, is shown to be part of a legislative plan to evade and defeat the decision of the Supreme Court

in the Segregation cases, *Brown v. Board of Education,* and to retain segregation in the public schools, and is violative of the Fourteenth Amendment and void:

(a) Following the decision in *Brown v. Board of Education* rendered on May 17, 1954, South Carolina Act No. 55, Acts and Joint Resolutions of 1955 was passed giving school trustees power, among other things, to operate or not operate any public schools of their districts, to transfer any pupil from one school to another and to determine the school within the district in which any pupil shall enroll, Appendix "A" hereto, infra, p. 15.

(b) On February 14, 1956, the socalled South Carolina Interposition Resolution (Appendix "B" hereto, infra, p. 16) was passed, a copy of which was directed to be sent to the Supreme Court, condemning the decision in *Brown v. Board of Education* and in effect declaring the intention and purpose to continue to maintain segregation in the public schools.

(c) On March 8, 1956, said Act No. 662 was passed, implementing Act No. 55 of 1955 and the said Interposition Resolution. Reference to said Act No. 662, Appendix "C" hereto, *infra*, p. 21, shows that it imposes onerous burdens and requirements difficult, if not impossible, to comply with in the case of the average child who may be aggrieved, among which is the requirement that the case of each child shall be heard and disposed of separately, which obviously, if the requirement could be complied with, could but result in multitudinous useless, expensive, separate hearings and appeals before boards and courts acting under provisions of the Constitution and statutes of South Carolina which prohibit the mixing of races in the public schools, and which are still claimed to be of force notwithstanding the decision in *Brown v. Board of Education*, as is shown by the said Interposition Resolution. It would seem that, if permitted

to stand, a more effective scheme for defeating rights such as are undertaken to be asserted here could scarcely be devised. Clearly the said Act No. 662 is void as violative of the Fourteenth Amendment. *Lane v. Wilson*, 307 U. S. 268, 83 L. Ed. 1281; *Bush v. Orleans Parish School Board*, 138 F. Supp. 336.

5. The rule as to exhaustion of administrative remedies provided by state law before resort can be had to federal courts obviously has not the slightest application in the instant case where the right undertaken to be asserted under federal law is denied by state law, which though declared void by the Supreme Court is still claimed by the state to be of force, and the supposed administrative remedy is not, in fact, a remedy at all, but is shown to be a contrivance designed to defeat the right undertaken to be asserted.

6. The alleged remedies provided by the said South Carolina Act No. 662 of 1956 are judicial, and not administrative, except as to the requirement of appeal from Boards of Trustees to County Boards of Education, and the answer of respondents (R. 9-10) shows that in the instant case there was action by petitioners and by the County Board of Education, prior to the commencement of the instant case, substantially fulfilling the said requirement.

It is not necessary to exhaust judicial remedies provided by state law before resorting to federal courts. *Lane v. Wilson*, 307 U. S. 268, 83 L. Ed. 1281.

7. The court below had before it the entire record in the case showing that there is no manner of defense to the action, no issue of fact for determination, and nothing to be tried or done as prerequisite to the granting of the relief sought and the Court should have finally disposed of the case by appropriate decree.

8. In the circumstances here shown the order refusing summary judgment was in effect a final order and appealable as such and the court below erred in holding to the contrary. *Baltimore & O. R. Co. v. United Fuel Gas Co.*, 154 F. (2d) 545; *The Attualita*, 238 F. 909; *Odell v. H. Batterman Co.*, 223 F. 292; *Sanders v. Bluefield Waterworks & Improvement Co.*, 106 F. 587; *W. J. Dillner Transfer Co. v. U. S.*, 101 F. Supp. 506, affirmed 344 U. S. 883.

9. In rendering the decision herein which it did render and in holding that petitioners were not entitled to the injunctive relief sought, the court below decided federal questions in a way in conflict with applicable decisions of the Supreme Court. *Lane v. Wilson*, 307 U. S. 268, 83 L. Ed. 1281, and others.

10. The facts and circumstances involved here show open and flagrant defiance of law and pose an attack upon the federal judicial system, and it is believed that in not reversing the District Court and in not affirmatively expressing disapproval of and overruling the opinions, rulings, statements and charges made by the District Court, and thus repulsing such attack, the Court of Appeals tacitly sanctioned, or its action was in effect equivalent to sanctioning, such a grave departure from the accepted and usual course of judicial proceedings by the District Court as in the public interest, as well as in the interest of the petitioners, to call for an exercise of the Supreme Court's power of supervision, and for the granting by the Supreme Court of the relief here sought.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be granted.

Respectfully submitted,

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